

August 26, 1950
Op. No. 50-316

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Wilson
Mr. Carl D. Hammond
County Attorney
Mohave County
Kingman, Arizona

Dear Mr. Hammond:

We have your letter of August 21, 1950, containing a request for an opinion as follows:

"Recently a petition was filed in the Office of the Board of Supervisors in which the Board is petitioned for an order vacating a portion of Pine Street in Kingman. * * *

I am enclosing a copy of the petition and also a copy of the plat of the Townsite of Kingman on which the portion of the street they wish vacated is delineated.

The street is 100 feet in width according to the original townsite and is paved by a hard-surface road bed about 20 to 25 feet wide, which is located in the north 50 feet of the street. The property owners south of this street are asking that the Board vacate the south 50 feet of the street and have it vest in the several owners of the abutting property in accordance with Section 59-603.

* * * I would appreciate your opinion so that I can submit it to the Board."

It is our opinion that the Mohave County Board of Supervisors may not lawfully abandon the portions of Pine Street indicated on the plat.

We believe that filing of this plat constituted the dedication of the street in question to the public and this method, of course, is used and recognized in Arizona as one way to dedicate property to the use of the public. Collins v. Wayland, 59 Ariz. 340, 127 P. 2d 716, certiorari denied 63 S. Ct. 760, 318 U.S. 767. The so-called common law method of dedication, i.e., dedication by oral words or conduct, is also recognized in Arizona. Collins v. City of Phoenix, 269 F. 219. Property may also be dedicated to the public by an outright grant of the fee and if this occurred here and if the trustee of the townsite was given a deed to this street then we believe that even if the Board did have the power to partially abandon a roadway it would not have the power to grant to the abutting owners' land which is owned in fee by the County.

If the Board of Supervisors did abandon the roadway in question they would have to do so under the provisions of Chapter 59, Article 6, ACA 1939. The pertinent parts of this article read:

"Abandoning streets and alleys.-- The boards of supervisors may vacate and abandon streets, alleys and avenues without the boundaries of incorporated cities and towns, shown upon recorded plats as dedicated to the public, or to which the public or the county may have received title by deed, in like manner and upon like procedure as for abandoning county highways." (Section 59-602)

"Reversion to owner of abutting property.-- Whenever any street, avenue, alley, or county highway shall be vacated and abandoned, title to the land within the boundaries of the vacated street, avenue, alley, or county highway shall revert to the owner or owners of the tract or tracts of land out of which it was originally dedicated and shall vest severally in the owners of the bounding and abutting property." (Section 59-603)

The doctrine that the Board of Supervisors has no powers beyond those that are expressly conferred upon it by statute is well settled in this state. State v. Board of Supervisors, 14 Ariz. 222, 127 Pac. 727; Commercial Life Insurance Co. v. Wright, 64 Ariz. 129, 166 P. 2d 943. We think that this doctrine is especially applicable here for the reason that to allow the Board of Supervisors to partially abandon public ways would lay the way open for them to confer benefits upon owners whose property abutted public ways to the detriment of the public using these ways. In other words, if the Board were to abandon this portion of Pine Street, it being a well-known fact that the actual paved part of a right of way generally covers less than half of the same, then there is no reason why the Board could not cut down the width of all the streets in Kingman to fifty feet.

We are satisfied that in abandoning public highways under the statute the Board of Supervisors merely acts as a tribunal to determine whether or not the fact of abandonment by the public exists and an examination of Section 59-601 relating to the procedure for abandonment would seem to bear this out.

There being no statutory prerequisites or definitions of "abandonment", we must resort to the common law for guidance. It is indicated in 26 C.J.S. Dedication, Section 63, page 153, that the fact that only a part of a public highway is actually used for travel does not constitute an abandonment by the public of the unused or untraveled portion of the highway. See Santa Ana v. Santa Ana Valley

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Irrigation Company, 124 Pac. 847, cited therein. The same rule is set forth in 39 C.J.S. Highways, Section 131, page 1068. See also the following cases on this point: Hall v. Flag Special Road District, 296 S.W. 164; Stuart v. Board of Commissioners of Cuyahoga County, 165 N.E. 53 and McRoberts v. Vogel, 195 N.E. 417. In the last cited case the court held that even though a part of a roadway had not been used by the public and had even been fenced in and encroached upon by the abutting land owners from a period of from twenty-five to fifty years, still the entire right of way remained a public roadway and that no part of the same had been abandoned.

The portions of Pine Street which the petitioners are seeking to have the Board abandon are immediately adjacent to the Mohave County courthouse and we believe that it would go without saying that the convenience of persons desiring to park their automobiles close to the courthouse might be seriously impaired if such an abandonment was ordered. So even if it were conceded that the Board had implied authority to take the action requested, we cannot perceive, under the facts of this case, how the fact of the abandonment by the public could possibly be established.

Upon the foregoing authorities, it is our conclusion that the Board of Supervisors does not have the authority to abandon part of a roadway and that the statutes contemplate either total abandonment or no abandonment at all.

We trust that this will aid you in this matter and we enclose herewith the plat which you sent us.

Very truly yours,

FRED O. WILSON
Attorney General

CALVIN H. UDALL
Assistant Attorney General

CHU:mw
Encl.

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